

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MONTY C. PEPPER,	§	
	§	No. 198, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0401017318
Appellee.	§	

Submitted: June 1, 2010
Decided: August 13, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 13th day of August 2010, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Monty C. Pepper, filed this appeal from the Superior Court’s summary denial of his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Pepper’s opening brief that the appeal is without merit.¹

¹ Del. Supr. Ct. R. 25(a).

(2) It is clear to the Court that the Superior Court properly denied Pepper's third motion for postconviction relief as procedurally barred² and without requiring an affidavit from Pepper's "Second Counsel."³ All of Pepper's claims, including his claim that his "Second Counsel" was ineffective for failing to advise him of his right to a direct appeal, were formerly adjudicated either in Pepper's first motion for postconviction relief or in his second motion for postconviction relief, the denials of which were affirmed on appeal.⁴ Those claims are now procedurally barred under Rule 61(i)(4) without exception, as Pepper has not demonstrated that reconsideration of any of the claims is warranted in the interest of justice.⁵

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

Randy J. Holland
Justice

² See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to relief).

³ In the April 30, 2008 order affirming the denial of Pepper's first motion for postconviction relief, this Court referred to the counsel appointed to represent Pepper on his plea withdrawal motion as his "Second Counsel." *Pepper v. State*, 2008 WL 1887287 (Del. Supr.).

⁴ See *id.* (affirming denial of first motion for postconviction relief); *Pepper v. State*, 2008 WL 5191817 (affirming denial of second motion for postconviction relief).

⁵ Del. Super. Cr. Crim. R. 61(i)(4).